

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 22-19361-MBK
	.	(Jointly Administered)
BLOCKFI INC., <i>et al.</i> ,	.	
	.	
Debtors.	.	
	.	
. . . . .	.	
BLOCKFI INC., <i>et al.</i> ,	.	Adversary No. 23-01071-MBK
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
TREY GREENE AND	.	
ANTONIE ELAS,	.	
	.	
Defendants.	.	
	.	
. . . . .	.	
OFFICIAL COMMITTEE OF	.	Adversary No. 23-01144-MBK
UNSECURED CREDITORS,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
BLOCKFI INC., <i>et al.</i> ,	.	
	.	
Defendants.	.	
	.	
. . . . .	.	
BLOCKFI INTERNATIONAL, LTD.,	.	Adversary No. 23-01175-MBK
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
VRAI NOM INVESTMENT LIMITED,	.	
	.	
Defendant.	.	Wednesday, August 30, 2023
	.	10:02 A.M.
. . . . .	.	

TRANSCRIPT OF MOTIONS HEARINGS  
BEFORE THE HONORABLE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES VIA ZOOM VIDEOCONFERENCE:

For the Debtors:

Haynes and Boone, LLP  
BY: JORDAN CHAVEZ, ESQ.  
AIMEE FURNESS, ESQ.  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219

For the Official Committee  
Unsecured Creditors:

Brown Rudnick LLP  
BY: SHARON I. DWOSKIN, ESQ.  
One Financial Center  
Boston, MA 02111

For Cameron Wyatt:

Lowenstein Sandler, LLP  
BY: MICHAEL S. ETKIN, ESQ.  
One Lowenstein Drive  
Roseland, NJ 07068

For the United States  
of America:

U.S. Department of Justice  
BY: SETH BRANDON SHAPIRO, ESQ.  
Civil Division  
1100 L Street, NW, Room 7208  
Washington, DC 20005

For Joint Provisional  
Liquidators:

Faegre Drinker Biddle & Reath LLP  
BY: RICHARD J. BERNARD, ESQ.  
1177 Avenue of the Americas  
41st Floor  
New York, NY 10036

For Proposed Lead  
Counsel in Class Action:

Pomerantz, LLP  
BY: BRIAN CALANDRA, ESQ.  
600 3rd Avenue  
New York, NY 10016

For Individual Defendants  
in Securities Class Action:

Shearman & Sterling  
BY: DAN GOLD, ESQ.  
The Link at Uptown  
2601 Olive Street, 17th Floor  
Dallas, TX 75201

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

---

**J&J COURT TRANSCRIBERS, INC.**  
268 Evergreen Avenue  
Hamilton, New Jersey 08619  
E-mail: [jjcourt@jjcourt.com](mailto:jjcourt@jjcourt.com)

(609) 586-2311 Fax No. (609) 587-3599

1 (Proceedings commenced at 10:05 a.m.)

2 THE COURT: Okay. Good morning, everyone. We will  
3 start the BlockFi, I guess BlockFi calendar this morning.  
4 Those are the only matters I have on. We are hearing the  
5 matter remotely. So the usual rules apply. If you wish to be  
6 heard, please raise your hand and I will do my best to spot you  
7 and hear from you.

8 My understanding is the pending motion to intervene  
9 has been resolved. The JPL's motion to intervene, I believe an  
10 order, a proposed order was sent. So, Mr. Bernard, I see your  
11 hand raised.

12 MR. BERNARD: Yes, Your Honor. Richard Bernard with  
13 Faegre Drinker on behalf of the Joint Provisional Liquidators.  
14 Yes, yesterday afternoon towards the end of the day we came to  
15 agreement on the form of order with the U.S. Government. It's  
16 been circulated. I don't think the Committee has any issue  
17 with it. And I know the debtor signed off on a prior version  
18 of that form of order.

19 And we've submitted it informally to Your Honor  
20 through your chambers email. But we understand that there's a  
21 more formal process to submit an agreed order.

22 THE COURT: All right. Ms. Dwoskin, did you want to  
23 be heard?

24 MS. DWOSKIN: Yes, Your Honor. Sharon Dwoskin --

25 THE COURT: Thank you, Mr. Bernard. I appreciate it.

1 MS. DWOSKIN: Sharon Dwoskin from Brown Rudnick for  
2 the Committee. We have no objection to the JPL intervention,  
3 and no comments to the order that was circulated to us, and it  
4 will be submitted.

5 THE COURT: That's fine. So I'm happy to look at the  
6 order. And if there are any concerns, I assume parties will  
7 reach out for the Court.

8 That leaves us with I believe two matters that are  
9 contested. The motion by the lead plaintiff, or proposed lead  
10 plaintiff, Cameron Wyatt to revise the prior orders of the  
11 Court with respect to the proposed class action matter, and the  
12 contested motion to stay the adversary proceeding with the  
13 United States pending a determination of the motion to withdraw  
14 the reference.

15 Ms. Chavez, let me hear from you. Thank you.

16 MS. CHAVEZ: Good morning, Your Honor.

17 Jordan Chavez along with Aimee Furness of Haynes and  
18 Boone on behalf of the BlockFi debtors.

19 THE COURT: Good morning.

20 MS. CHAVEZ: I agree with you, Your Honor. Those are  
21 the only two remaining matters set on the agenda. If it's okay  
22 with Your Honor, before we take up those matters, I would like  
23 to just take a moment to briefly address the data privacy issue  
24 that arose over the last few days.

25 THE COURT: I think that would be appropriate. Thank

1 you.

2 MS. CHAVEZ: Thanks, Your Honor.

3 We were notified by Kroll that there was a swapping  
4 attack on an employee's mobile phone. They fell victim to a  
5 data breach resulting in a leak of personal information of the  
6 BlockFi creditors, including the name, address, and emails and  
7 phone numbers, the type of information that BlockFi would have  
8 provided to Kroll for the creditor matrix and for servicing  
9 purposes.

10 Kroll is still conducting a more thorough  
11 investigation. But BlockFi took immediate action, along with  
12 coordinating with the Committee and Kroll to provide the  
13 relevant communication to the affected parties, along with  
14 discussions with the U.S. Trustee and the relevant regulatory  
15 and government authorities. I did just want to confirm on the  
16 record that BlockFi was not the subject of the attack, and that  
17 its system is still secure.

18 THE COURT: All right. That's good to hear. It's  
19 frightening that this information is so readily available  
20 through such what would seem facile ways of accessing through  
21 telephone. It's alarming in so many respects. But I'm glad  
22 that the debtor, and that all the debtors that are involved in  
23 these cases, are taking the proper steps.

24 Does anybody else --

25 MS. DWOSKIN: Thank you, Your Honor.

1 THE COURT: -- wish to comment on it? All right.

2 Let me turn to debtors' counsel. Is there a  
3 preference for which matter to be heard first?

4 MS. CHAVEZ: Yes, Your Honor. I think we would  
5 propose taking up the Green adversary first which will be  
6 handled from our end by Ms. Furness.

7 THE COURT: All right. Thank you. Then let me turn  
8 to -- let me have appearances on this matter.

9 MR. ETKIN: Your Honor, Michael Etkin, Lowenstein  
10 Sandler, on behalf of the proposed plaintiff, Mr. Wyatt. And  
11 with me is my colleague Michael Papandrea, as well as Brian  
12 Calandra who is proposed lead counsel in connection with the  
13 class action representing Mr. Wyatt.

14 THE COURT: All right. It is your motion. Why don't  
15 you proceed, then.

16 MR. ETKIN: Thank you, Your Honor.

17 Just a couple of observations at the outset. First  
18 of all, we are requesting extremely narrow relief from the  
19 existing injunction that was entered back in April. We simply  
20 want the district court, or courts to be able to rule with  
21 respect to the pending lead plaintiff motions and issue an  
22 order with respect to those motions.

23 There have been no objections by the counsel on  
24 behalf of the plaintiffs that executed the stipulation. We  
25 know that Mr. Green's counsel has advised us that they support

1 the motion that's before Your Honor today. In addition, we  
2 have not seen any objection by the Creditors' Committee.

3 With respect to the individual defendants who are the  
4 beneficiaries of the injunction and have been referenced by  
5 counsel for the debtors, there's been no objection filed by  
6 them. And in fact, it's worthy of note that there actually was  
7 no declaration filed by any of these non-debtor defendants, the  
8 individuals regarding the so-called impact on them and whether  
9 they even intend to try to take a position with respect to the  
10 lead plaintiff motions. They have not weighed in at all.

11 You would think, Your Honor, that if there is an  
12 allegation that they would drop everything with respect to  
13 their responsibilities to the debtor and focus their entire  
14 attention on lead plaintiff motions where they actually have no  
15 standing to weigh in at all. It's a bit beyond the pale.

16 Another observation that's important, Your Honor, is  
17 the claims that are asserted in the class action. Those claims  
18 are claims in connection with the purchase or sale of a  
19 security, in this case the BIAs are alleged to be securities  
20 covered by the federal securities laws.

21 And as I'm sure the Court is aware, under Section  
22 510(b) of the Code, those types of claims are statutorily  
23 subordinated. So those claims would not be entitled to a  
24 distribution under the plan, the proposed plan. And I don't  
25 know that whether anyone has even filed a claim against the

1 debtor in the bankruptcy proceeding. The debtors are obviously  
2 not parties to the class actions. Those class actions were  
3 filed after the petition date.

4 So there's no impact on the debtors with respect to  
5 the class actions all together.

6 THE COURT: Of course, doesn't that assume that we're  
7 dealing with securities? I mean, that's just not such a given,  
8 given the cases that have come down recently.

9 MR. ETKIN: No question, Your Honor. That's an issue  
10 that the district court will have to wrestle with down the  
11 road. But in terms of what's before you today, if they're not  
12 securities, then there are no federal securities claims and the  
13 class actions fail on the merits.

14 So, excuse me. So, you know, that's not a today  
15 issue. And if there is a resolution of that issue, that the  
16 BIAs are not securities, then there are no federal securities  
17 claims. So that's really the bottom line. And your  
18 observation is correct.

19 Your Honor, as I indicated, there's a very limited  
20 purpose to our motion. But debtors have put in front of you a  
21 parade of horrors that I'd like to address briefly. I know  
22 they're addressed in the briefing. But I think it's important  
23 to point some of them out.

24 First of all, even dating back to the debtors'  
25 opposition to the motion to shorten time, the debtors who again



1 are not parties to the class action and there are no claims  
2 certainly asserted by our client. We don't know whether there  
3 are any other claims asserted based upon the violation of the  
4 securities laws.

5 But the debtors take the position that somehow the  
6 district court's deciding the lead plaintiff's motions would  
7 force the debtors to participate in the class action lawsuits  
8 and forfeit their due process rights. Now, those are lofty  
9 words, Your Honor. But there's no explanation as to the basis  
10 for that kind of hyperbole.

11 There simply is no impact on the debtor. And the  
12 debtors' due process rights are not put into play by virtue of  
13 this Court granting the very limited relief that we're seeking.

14 Second, they take the position back then and in their  
15 opposition that we're looking to solve a problem that doesn't  
16 exist with respect to representation of putative class members.  
17 They claim that the Creditors' Committee is already  
18 representing these class members with respect to the claims  
19 asserted in the class action.

20 Well, the problem with that, Your Honor, it ignores  
21 the distinction between the status of those individuals as  
22 holders of BIAs. And with respect to that status, yes, they  
23 are general, unsecured creditors and part of the Creditors  
24 Committee's constituency.

25 But with respect to the subordinated claims that are

1 asserted in a class action, which may or may not have even been  
2 asserted in the Chapter 11 cases, and even if they were, they  
3 would not be entitled to any distribution by virtue of that  
4 subordination. The Creditors' Committee doesn't represent  
5 their interests with respect to those claims. That would be an  
6 interest that would be represented by a court-appointed lead  
7 plaintiff.

8 And we're just looking to get to that point where  
9 there is a court-appointed lead plaintiff who has certain  
10 responsibilities and fiduciary obligations to individual class  
11 members regardless of whether a class has been certified or not  
12 and is empowered to take certain positions with respect to the  
13 class, again even in advance of certification.

14 And, Your Honor, what's looming now and why the  
15 motion was made is a confirmation objection deadline of  
16 September 11th, and a confirmation hearing on September 26th.  
17 And to the extent the class is, and their claims in the class  
18 action need protection, and to the extent that a position needs  
19 to be taken, we believe is critical that a lead plaintiff be  
20 appointed.

21 Now, the debtors also harp on the fact that there's  
22 no guarantees that the district courts will rule in time.  
23 Well, we get that. That's a risk. We don't know what the  
24 district courts are going to do, and what the orders are going  
25 to say, and whether Mr. Wyatt will in fact be appointed by the

1 district court.

2 But one thing is for certain. If the district court  
3 is precluded from even considering the motions, and the relief  
4 that we're requesting is not granted, then there will be no  
5 court-appointed lead plaintiff who's in a position to take a  
6 position with respect to the plan and confirmation, whatever  
7 that might be.

8 Simply put, Your Honor, Mr. Wyatt or any lead  
9 plaintiff that's appointed would be handcuffed by virtue of not  
10 having the imprimatur of an Article III Court in terms of an  
11 order appointing him or some other individual to assume the  
12 rule of the lead plaintiff, order the appointment of lead  
13 plaintiff's chosen counsel, and put them in a position to act  
14 in the bankruptcy proceeding.

15 THE COURT: But let me ask you, Mr. Etkin, if I were  
16 to grant the relief to allow the process to go forward, is the  
17 logical next motion on shortened time going to be judge, the  
18 district court hasn't decided the motion for lead plaintiffs  
19 yet. We need to adjourn the confirmation hearing and this  
20 process to allow the lead plaintiff to be appointed and to be  
21 in a position to participate at the confirmation hearing? Is  
22 that what's going to follow?

23 MR. ETKIN: Well, I don't know, Your Honor. You  
24 know, thanks for pointing out an option to me with respect to  
25 this. But --

1 THE COURT: I doubt I needed to point that out.

2 MR. ETKIN: But you know, to be frank with the Court,  
3 I don't know that that's something that we would entertain. I  
4 think the first thing that we would do if the Court were to  
5 sign an order, and hopefully sign it quickly allowing us to go  
6 forward is to advise the district courts that they can now  
7 decide the lead plaintiff motions, and that -- and point out  
8 the schedule with respect to confirmation, and try to get them  
9 to issue an order quickly.

10 Your Honor, as you know, you know, I'm somewhat  
11 familiar with the fast-moving train of a confirmation process,  
12 and the danger of trying to step in front of that train. So I  
13 don't know that we will take that step.

14 I think that our preference would be to advise the  
15 district court quickly, advise the district court that timing  
16 is an issue and important, and hopefully get a decision out of  
17 them in advance of the objection deadline which is obviously  
18 why we moved on short notice in the first place, and certainly  
19 in advance of the confirmation hearing. And you know, to the  
20 extent that doesn't happen, we would have to weigh our options.

21 THE COURT: Fair enough.

22 MR. ETKIN: Your Honor, this is not an attempt to  
23 push the class actions forward to anyone's detriment. There  
24 would be no merits determinations here. The individual  
25 defendants obviously don't care by virtue of the fact that they

1 did not weigh in at all on the motion, and that they did not  
2 even execute a declaration with respect to the factual  
3 allegations in the debtors' opposition.

4 So the issue of whether the individual defendants'  
5 hair will be put on fire by virtue of a district court deciding  
6 a lead plaintiff motion, I just don't think that there's any  
7 substance to that kind of argument.

8 Now, the debtors also argue that, like they previewed  
9 in their objection to the motion to shorten time, that the same  
10 considerations that would support, excuse me. The same  
11 considerations that would support the injunction in the first  
12 place are at play with respect to the limited relief that we're  
13 requesting.

14 Well, you know, leaving aside the merits of those  
15 arguments from Mr. Wyatt's perspective, as well as the extent  
16 to which those arguments support a preliminary injunction  
17 regarding all other activity in the class actions which is not  
18 the subject of our motion, they certainly have nothing to do  
19 with what we're asking the Court to do. And let me just get  
20 into that briefly.

21 Mr. Wyatt inherited a stipulated injunction order.  
22 It's not a complaint, Your Honor. It's just a fact. And it  
23 does contemplate that the district court, and I'm talking about  
24 the stipulated order, it contemplates that the district court  
25 can enter certain unidentified orders, and it does not

1 expressly prohibit the district court from entering orders with  
2 respect to the lead plaintiff motion.

3 But here we are. We're not taking that position on  
4 the merits. We're in front of Your Honor asking for relief.

5 Let's talk about each of the three issues that the  
6 debtors raise, the collateral estoppel evidentiary prejudice.  
7 I'm lost with respect to that one, Your Honor. I don't know  
8 what the relief that we're requesting would have to do with  
9 respect to any res judicata, collateral estoppel, evidentiary  
10 prejudice on a debtor that's not a defendant in the class  
11 action where there are no claims against the debtor, and even  
12 if there were, those claims would be subordinated and not  
13 entitled to a distribution under the current version of the  
14 plan. So I'm at a loss to know where that's coming from.

15 With respect to the impact on the individual  
16 defendants who are still at the company, and who are performing  
17 services for the company, again I've raised this issue. The  
18 papers deal with the issue. The idea that they're going to  
19 drop everything and focus their attention on the district court  
20 deciding these lead plaintiff motions just makes no sense, and  
21 there's no evidentiary support for it. So again, I don't know  
22 how that figures in as a reason for the Court to deny the  
23 limited relief that we're requesting.

24 And lastly, Your Honor, they focus on their  
25 indemnification obligations. A couple of things to say about

1 that. And we do raise that in our reply. Number one, the  
2 indemnification with respect to a claim against these  
3 individuals that's based upon the purchase or sale of a  
4 security is likewise subordinated under 510(b).

5           So those indemnification claims, when you look at the  
6 Code, clearly would not be entitled to a distribution. The  
7 debtors may point out, although they didn't in their papers,  
8 that the debtors assumed certain indemnification obligations  
9 under the terms of the plan. Well, there's a carve-out with  
10 respect to those indemnification obligations, Your Honor, as it  
11 relates to gross negligence, fraud, willful misconduct. Those  
12 are the claims that are asserted in the class action. So to  
13 the extent that the class would be successful with respect to  
14 the claims, those claims, on their face, would be carved out of  
15 any indemnification obligations.

16           And lastly, Your Honor, with respect to the somewhat  
17 newly minted settlement with the committee, several of those  
18 key defendants have waived their indemnification claims against  
19 the debtor, in any event, under the terms of that settlement  
20 agreement. So in terms of indemnification, Your Honor, oh, and  
21 of course there is insurance with respect to those claims as  
22 well. So in terms of those arguments, Your Honor, there's  
23 really no substance to them, certainly as they relate to the  
24 relief that we're requesting in connection with the motion.

25           The debtors also raised in their opposition that the

1 selection of lead plaintiff is complex and time consuming.  
2 Well, I've had the opportunity over the years to be involved in  
3 that process where there's an intervening bankruptcy. And I  
4 haven't seen that. It's a competitive process. It may be  
5 complex as between those vying for the role with respect to  
6 lead plaintiff motions. But there's nothing before the court  
7 that supports the conclusory allegation that the process is  
8 complex and time consuming.

9 And frankly, Your Honor, the district court believes  
10 that, they'll act accordingly. But they need to be given the  
11 opportunity to make a decision on that in the first instance.  
12 And that's why we're here.

13 Finally, Your Honor, the debtors take the position  
14 that, well, by virtue of the terms of the stipulated  
15 injunction, once the plan goes effective, you can do whatever  
16 you want. So, no big deal. You know, the problem is that  
17 there are issues that the plan creates victims a vie third  
18 party releases, an issue that this Court and many courts have  
19 been wrestling with for quite some time. And at the end of the  
20 day, if the plan is confirmed without the participation of a  
21 court-appointed fiduciary on behalf of class members, 30 days  
22 after the effective date will come and those claims that are  
23 the subject of the class action could be wiped out or severely  
24 eviscerated under the terms of the plan

25 So, you know, while we appreciate the injunction is



1 automatically terminated at that point in time, that's going to  
2 be much too late with respect to that issue, as well as other  
3 issues that may exist under the plan that may require some  
4 involvement by a court-appointed lead plaintiff. So, Your  
5 Honor, the idea that there's no harm in waiting until then,  
6 really doesn't provide what's required and avoid the prejudice  
7 that would happen without an appointment by the district court.

8           So with that, Your Honor, we would urge the court to  
9 grant the motion and allow us the opportunity to advise the  
10 district court that they're free to make a decision. And  
11 hopefully they will make it quickly. And whoever the Court  
12 appoints as lead plaintiff and their counsel are would have the  
13 opportunity to weigh in with respect to the confirmation  
14 process.

15           THE COURT: All right. Thank you, Mr. Etkin. Let me  
16 turn to Ms. Furness.

17           MS. FURNESS: Thank you, Your Honor. Mr. Etkin  
18 glosses over one significant issue here. There are two cases.  
19 We have the Green matter and the Elas matter. One is in New  
20 Jersey, one is in Massachusetts. Mr. Etkin didn't address it  
21 today. They didn't address it on their reply.

22           But consolidation and whether there are two cases  
23 that go forward at the exact same time in two different courts  
24 based on more or less the same actions has to be decided first.  
25 The PSLRA says that, "If any party has sought to consolidate

1 those actions for pretrial purpose or for trial, that has to be  
2 heard before the lead plaintiff process." First.

3 Sometimes Mr. Etkin used district court. Sometimes  
4 he used district court. We believe that this entire issue was  
5 ignored simply because it goes back to the original issues that  
6 we brought before this Court in April of this year.

7 The defendants in the class action, purported class  
8 action, have every right to participate and weigh in on that  
9 consolidation. The PSLRA says any party, Federal Rule of Civil  
10 Procedure allows any party to address consolidation. That must  
11 be heard first. To the extent it hasn't been filed, it's  
12 because this Court's stipulation allowed the lead plaintiff  
13 motions to be filed and said nothing else. That's where we  
14 are. That's where it stopped.

15 So the idea that there is absolutely no harm here,  
16 and the harm that we identified in April have gone away now, is  
17 absurd and without basis. The same concerns that we presented  
18 previously, one for indemnification, and two for divided times  
19 of our officers and directors still exist today.

20 As far as evidentiary substance on that, we presented  
21 that with the original TRO application, Your Honor, and you've  
22 got it in the file. And if they have to turn their attention  
23 to matters such as these, again, in which defendants have the  
24 absolute right to participate, they won't be focused on the  
25 debtors during this incredibly crucial time. We have less than

1 a month prior to the confirmation of the plan.

2 Mr. Etkin talked a lot about the indemnification  
3 provision and why that doesn't matter as it relates to the  
4 debtors' concern with this moving forward. But, Your Honor,  
5 you know this. Mr. Wyatt's counsel seems to have ignored it.  
6 The plan hasn't been confirmed, right? So to the extent anyone  
7 in the officers and directors have waived their right to  
8 indemnification in the plan, that's not confirmed yet. And  
9 until that is, it is a concern for the debtors. And we are  
10 entitled to have the full focus of our officers and directors.

11 As far as what the debtors can do on the lead  
12 plaintiff, or excuse me, as far as what the defendants can do  
13 on the lead plaintiff process, in each of the two district  
14 courts again that we're talking about, it's not necessary that  
15 this Court make a decision related to that. Instead, we  
16 presented the Court with cases that clearly say defendants can  
17 and do participate in both the lead plaintiff process, whether  
18 the plaintiff is adequate, and the lead counsel process.

19 Whether these district courts again, two of them in  
20 both New Jersey and Massachusetts, actually take the arguments  
21 of those defendants or not is not before this Court. They can  
22 participate. Whether the participation leads the Court to  
23 review those things or not, again, it is that participation  
24 that deprives the debtors of their officers and directors time  
25 during a very, very crucial moment in these bankruptcy cases.

1           Mr. Wyatt and the proposed class have demonstrated  
2 absolutely no irreparable harm here. It is their duty to come  
3 here with good cause. There's no evidentiary basis. You heard  
4 Mr. Etkin argue that repeatedly as far as the debtors. But  
5 again, we presented the evidentiary basis which is for this  
6 Court when we came to argue for the TRO, and we got the  
7 stipulation, agreed to by Mr. Green's counsel, Mr. Elas's  
8 counsel. There's been absolutely nothing presented, no  
9 declaration or anything on behalf of Mr. Wyatt or this  
10 purported lead plaintiff. There's nothing to show irreparable  
11 harm.

12           And again, going back and, Your Honor, I'm confident  
13 you've read our briefing. But there is no standing in this  
14 bankruptcy for purported class counsel, purported plaintiff in  
15 a class action against non-debtors. We've presented you, Your  
16 Honor, with the Dynegy case. There's another case out of the  
17 Eastern District of Virginia that goes to the exact same  
18 analysis.

19           Somebody as a lead plaintiff in a securities  
20 litigation does not provide any authorization for them to come  
21 into the bankruptcy cases. It doesn't provide them any status  
22 to come into the bankruptcy cases. Being a lead plaintiff in  
23 one type of litigation is not, quote, tantamount to a blanket  
24 consent to any litigation that class counsel may wish to  
25 pursue.

1           So they've admitted they have no claims here.  
2       There's no place here for someone who has been designated as  
3       lead plaintiff solely in a one of two district courts related  
4       to a PSLRA action to come to this Court without further  
5       authorization, further moving, asking for this Court to clarify  
6       or to classify a class, certify a class. There's just  
7       absolutely no basis.

8           So again, because there's no basis, there's no  
9       irreparable harm that they've shown or can show in this case,  
10      especially considering again, we're in the last month before  
11      confirmation and stipulation by its own terms expires 30 days  
12      after confirmation of the plan.

13          As far as Mr. Etkin's argument that certain of the  
14      purported class members have, you know, a basis to object to  
15      confirmation, they can. They're more than welcome to. Mr.  
16      Wyatt clearly has counsel. And each one of them can come to  
17      this Court and object to the confirmation in whatever way they  
18      feel. It's just not appropriate here for a class action.

19          In addition, Mr. Etkin said that these folks have  
20      claims that, quote, could be wiped out or eviscerated. That's  
21      simply not true, Your Honor. The plan includes an opt out.  
22      These folks received the disclosure statement that discusses  
23      and explains the opt out provision of those releases. So if  
24      the individuals want to opt out, they can. It's possible. Mr.  
25      Wyatt has counsel. He can do it.

1 I also point the Court again to the delay that Mr.  
2 Wyatt has shown. In April, the stipulation was entered into by  
3 Green counsels -- Green's counsel and Elas' counsel. The lead  
4 plaintiff's motions were filed in May. And these folks waited  
5 three months, three months to come to this Court to ask for  
6 something else to go forward. They asked for it on an emergent  
7 basis simply one month before confirmation.

8 Again, Your Honor, this is their burden. They've  
9 presented no evidence to you. There is no irreparable harm  
10 here. These individuals have the same rights that they have  
11 with or without Mr. Wyatt being appointed as class counsel.  
12 And at the end of the day, this harms the debtors because our  
13 officers' and directors' attention will be focused on other  
14 matters at a time when we really need to have their attention  
15 focused here as we move towards confirmation in less than a  
16 month.

17 THE COURT: Thank you, Ms. --

18 MS. FURNESS: Thank you.

19 THE COURT: Thank you, Ms. Furness.

20 Mr. Calandra, I see your hand raised first.

21 MR. CALANDRA: Thank you, Your Honor. I just wanted  
22 to, as the purported lead, or proposed lead counsel in the  
23 class actions, I just wanted to speak to the issues about  
24 consolidation that were just raised, which really are  
25 meritless.

1           It's the same movants in both New Jersey and  
2 Massachusetts with the same certifications. So the same lead  
3 plaintiff is going to be selected in each, the one with the  
4 greatest losses which we submit is Mr. Wyatt. And there will  
5 be nothing having to do with consolidation that goes forward  
6 under the terms of the relief that we're looking for.

7           And it was a nice bit of three-card monte that  
8 counsel was trying to play with the nature of how consolidation  
9 must be addressed under the PSLRA. But there's nothing in the  
10 PSLRA that says consolidation must happen before a lead  
11 plaintiff is selected.

12           It's just that if a party wants consolidation, they  
13 need to move forward. And I can represent that none of the  
14 filers, who again are all the same in both actions, are going  
15 to be seeking consolidation under the very limited relief that  
16 we are seeking.

17           Counsel for the debtors also brought up the cases  
18 purporting to allow people like defendants in the current cases  
19 to weigh in on the lead plaintiff motion. As you saw in our  
20 papers, Your Honor, those cases are simply not -- they're,  
21 number one, a minority of cases, but number two, are not  
22 relevant here.

23           There is nothing wrong with notice. There's nothing  
24 wrong with the certifications. And there certainly is no issue  
25 regarding loss causation. In the case against Twitter, the

1 defendants pointed out that the proposed lead plaintiffs, the  
2 movants, could not have experienced any losses because they  
3 sold before the corrective disclosure.

4 Here, everyone held through the corrective  
5 disclosure, which was BlockFi's decision to file for  
6 bankruptcy. So there is absolutely no role they have to play.  
7 And I would suggest if they do try to play a role, it would be  
8 specious because there is just nothing that they can do.

9 And finally, Your Honor, I wanted to say that the  
10 debtors emphasize again and again that they don't want their  
11 officers and directors to be distracted. Their officers and  
12 directors are seeking to release these claims.

13 They are focused, at least in part, on their own  
14 personal matters in this bankruptcy. And allowing this very  
15 small step to go forward would require absolutely no further  
16 attention on their part, and certainly no greater distraction  
17 or focus on themselves that they've already expressed.

18 THE COURT: Thank you, Mr. Calandra.

19 Mr. Gold, your hand is raised.

20 MR. GOLD: Good morning, Your Honor. Dan Gold from  
21 Shearman & Sterling. I represent the individual defendants in  
22 this securities class actions. Thank you for letting us be  
23 heard. We did not file a formal objection simply because the  
24 debtors are covering the issues, and duplicative paper did not  
25 seem to benefit the Court, and it's a waste of attorneys fees.



1 I did want to address, we do have a role to play in  
2 the lead plaintiff process. Where there are issues, it is  
3 appropriate for us to weigh in. And in particular, the  
4 consolidation issue is a key one. We do have the two faces.  
5 The lead plaintiffs may not intend to, or the lead plaintiff  
6 movants may not intend to move for consolidation. That doesn't  
7 mean the defendants do not intend to do so at the appropriate  
8 time.

9 What we can't have are two different lead plaintiffs  
10 appointed on behalf of the same class in two different courts.  
11 There needs to be a degree of coordination and consolidation  
12 between the two courts. The defendants have an interest and a  
13 role, an important role to play, and making sure that that  
14 happens.

15 And what I'm hearing from at least one lead plaintiff  
16 movant is that we are now going to be forced to engage with six  
17 or seven individual clients to move on an expedited basis to  
18 get that coordination and consolidation among the courts,  
19 taking away from the role that they'll have to play with the  
20 debtors.

21 THE COURT: All right. Thank you, Mr. Gold.  
22 Mr. Calandra again?

23 MR. CALANDRA: Your Honor, that's just simply not  
24 true. If they want to move for consolidation, in their papers  
25 they suggested that they would resist any consolidation motion.

1 But there is nothing that defendants need to do with regard to  
2 a lead plaintiff motion in this case because they could only  
3 object to perhaps loss causation, certification, and notice.

4 And none of those, they don't suggest that they are  
5 an issue because they are not. And there won't be any need to  
6 wrangle multiple people under the relief, the very narrow  
7 relief that we are seeking. It will be the same lead plaintiff  
8 ordered in both cases. And they will be dealing with exactly  
9 one lead plaintiff, hopefully. Thank you, Your Honor.

10 THE COURT: All right, thank you.

11 And, finally, Ms. Furness?

12 MS. FURNESS: Thank you. Thank you, Your Honor.

13 Briefly, Mr. Calandra, he's awfully confident in what I think  
14 are opinions of what a court may or may not do. While he  
15 thinks that no matter what argument Mr. Gold's clients have,  
16 they will fail.

17 That's not for this Court to decide. Mr. Calandra  
18 and Mr. Etkin have, you know, come to the Court and said well  
19 debtors didn't present anything that shows the notice are wrong  
20 or that this is not an adequate plaintiff. It's not the  
21 debtors' job. The debtors aren't a defendant in that case.  
22 We're not required to do that.

23 The point is, Your Honor, Mr. Calandra cannot  
24 absolutely say that. He can't guarantee that the Court won't  
25 allow the defendants to do something. In addition, you also

1 have not heard, and which we do believe is significant, that  
2 you pointed out, they have not committed to this being it.

3 This is not it, Your Honor. Simply doing it is not  
4 going to be the end of this. The reason they've asked for it,  
5 the reason they think they have irreparable harm is if they can  
6 come in, again, with a month prior to confirmation to ask this  
7 Court for further things, for example delay of the confirmation  
8 hearing.

9 And again, Your Honor, there is no irreparable harm.  
10 Each of these individuals in this purported crime can do what  
11 they want to do to protect themselves. The disclosure  
12 statement allows -- gives everyone the information. The plan  
13 allows them to opt out for the releases.

14 There's no irreparable harm here. And, Your Honor,  
15 we would just respectfully request that you deny the relief  
16 requested by Mr. Wyatt.

17 THE COURT: All right. Thank you all.

18 MR. ETKIN: Your Honor, can I make one last point?  
19 And I apologize for the free-for-all. But Ms. Furness keeps  
20 talking about irreparable harm. I think the standard is good  
21 cause. And injecting an irreparable harm standard into this is  
22 just not correct.

23 We believe the good cause is obvious given the  
24 timing. We've set it out. If the individual defendants wanted  
25 to weigh in about consolidation, they should have filed.

1 Papers. They didn't.

2 If they want the cases consolidated, they can come in  
3 and file a motion tomorrow for limited relief from the  
4 injunction. That's up to them. But as Mr. Calandra pointed  
5 out, consolidation is not the issue before the Court.

6 And none of us can presuppose what the district court  
7 will say or do with respect to the lead plaintiff motions.  
8 This is all about giving the district courts the opportunity to  
9 weigh in. And what they do, what they say, what orders they  
10 entered and when they -- what orders they enter and when they  
11 enter them, you know, that's going to be up to them, and we'll  
12 have to deal with the consequences of that.

13 THE COURT: All right. Thank you. Thank you, Mr.  
14 Etkin.

15 Well-argued. I appreciate the movant's transparency  
16 and candor in coming to the Court. It's clear the purposes  
17 that would be served by the Court modifying the stipulated  
18 injunction and order that's already in place.

19 And I agree with Mr. Etkin the standard is cause. Is  
20 there cause to do so. Where I disagree with it, I don't find  
21 cause. I don't find any change in circumstances from when Mr.  
22 Trey Green and Mr. Antonie Elas, if I'm pronouncing it  
23 correctly, stipulated and agreed that for, and essentially an  
24 exchange, the opportunity to file the motions in advance of a  
25 deadline to do so and how important that was, and the

1 acknowledgment that their efforts cannot and should not impair  
2 the efforts of this debtor to reorganize.

3 Those efforts included a hotly contested mediation,  
4 several hotly contested mediation settlements proceedings in  
5 front of mediators, also in which the Court took part in, which  
6 has not been completed because there has been no confirmation  
7 of any plan yet.

8 The agreement that Mr. Green and Mr. Elas  
9 acknowledged, and through their stipulation was to allow the  
10 process to go forward, not to restrain or handcuff the  
11 necessary participants so that it would impair any insiders,  
12 that it would impair the reorganization.

13 And we are on the cusp of a plan. I don't know if  
14 the plan's going to be confirmed. I don't know what the voting  
15 is going to be. But we are on the cusp of having that. I  
16 believe it's scheduled for September 26th.

17 Certainly, the prospects of a plan that would impact  
18 the claims of Mr. Green and Mr. Elas were contemplated when the  
19 stipulation was agreed to. There is no prejudice to either  
20 those defendants in this adversary, or the plaintiffs, or Mr.  
21 Wyatt in participating further in the Chapter 11 process  
22 without a court-appointed fiduciary on their behalf.

23 And that's where I disagree to the language that's  
24 been in the brief that class members should have a  
25 court-appointed fiduciary for purposes of this Chapter 11.

1 These individuals, these class members, these proposed lead  
2 plaintiffs have counsel, and even without counsel, they have  
3 the ability to represent their interests and take issue with  
4 any aspects of the proposed plan that impacts, impairs their  
5 rights.

6           Indeed, and all counsel knows that there are  
7 opportunities apart from having a court-designated fiduciary as  
8 part of the class. Creditors often form ad hoc committees and  
9 retain counsel to get themselves involved in the case. And  
10 there's no surprise that we're at confirmation. That's what  
11 was contemplated in the three months between the time the  
12 stipulation was entered that that was the opportunity.

13           I don't find cause. I understand that Mr. Elas and  
14 Mr. Green may consent to the motion to modify the stipulated  
15 injunction. But that would operate as a back door for them to  
16 agree and allow another party to come in to get more relief  
17 than they requested in the stipulation.

18           And again, I see no prejudice. It's not an issue of  
19 irreparable harm. But the plan is an opt-out plan. But more  
20 importantly, these plaintiffs in the class action have an  
21 opportunity to engage with this Court with respect to the  
22 merits of the plan. And the process in the class action can  
23 proceed along the lines of the stipulated injunction.

24           What I will do to make sure because we don't know  
25 what happens on September 26th, if there are other delays. And

1 I would agree that the class actions can't be delayed  
2 interminably. The debtor was supposed to have an opportunity  
3 to confirm a plan.

4 They have that opportunity on September 26. So I  
5 will carry the motion to September 26, and to see if it looks  
6 like the plan process is being retarded, if there aren't votes  
7 or if there are certainly questions as to whether there is a  
8 viable plan, then I think the Court should take another look at  
9 letting these plaintiffs proceed in either of the courts or  
10 where the class actions are pending.

11 But the agreement in effect, and in the Court's view  
12 the proper basis to enter the stipulated injunction, haven't  
13 changed, and the circumstances haven't changed. And the  
14 potential impact and the potential impairment of the ability to  
15 pursue a reorganization and the mechanics involved in  
16 reorganizing warrant denying, well not granting the relief  
17 today but simply carrying the motion to September 26th.

18 So I'm not going to enter an order unless plaintiffs  
19 wish, well it's movants wish for me to enter an order denying.  
20 You know, my inclination is to simply carry the matter to  
21 September 26th. Mr. Etkin, do you prefer a denial? I'm trying  
22 to save you time having to refile in case the circumstances  
23 change.

24 MR. ETKIN: Well, I understand, Your Honor. And we  
25 appreciate that. And we'll live with carrying the motion to

1 the 26th.

2 THE COURT: All right. Thank you, Counsel.

3 MR. ETKIN: Thank you.

4 THE COURT: You're welcome to stay on for another  
5 interesting argument, or you may be excused.

6 MR. ETKIN: Thank you, Your Honor.

7 THE COURT: Thank you. Thank you all.

8 (Adversary Case 22-19361 concluded at 10:59 a.m.)

9 THE COURT: All right. Then, now let's move on to  
10 the motion filed on behalf of the United States of America  
11 seeking a stay of the pending adversary proceeding, 23-1144,  
12 brought by the Committee of Unsecured Creditors pending a  
13 determination of the motion to withdraw the reference.

14 Let me have appearances in this matter first on  
15 behalf of the United States.

16 MR. SHAPIRO: Good morning, Your Honor.

17 Seth Shapiro for the United States of America.

18 THE COURT: Good morning, Mr. Shapiro.

19 MS. DWOSKIN: Good morning, Your Honor.

20 Sharon Dwoskin from Brown Rudnick on behalf of the  
21 Official Committee of Unsecured Creditors.

22 THE COURT: Good morning, Ms. Dwoskin.

23 Other appearances?

24 MR. BERNARD: Richard Bernard, Faegre Drinker, on  
25 behalf of the JPLs.



1 THE COURT: Good morning again.

2 MR. BERNARD: Good morning.

3 MS. CHAVEZ: And Jordan Chavez again, Your Honor, on  
4 behalf of the debtors.

5 THE COURT: All right. And I guess that takes care  
6 of it.

7 All right. So needless to say, I've read the  
8 submissions and the opposition and the replies and the  
9 surreplies and all of it. Interesting issues.

10 Mr. Shapiro, let me turn to you first. Let's discuss  
11 just more process. We know there's a pending motion to dismiss  
12 in a couple of weeks. There's also I guess one element of the  
13 request for a stay is the Court has to make a finding of  
14 likelihood of success. It seems, and I'll be upfront, I  
15 haven't read the dismissal papers yet on either side. It seems  
16 almost incongruous for me to make a preliminary decision that  
17 I'm going to be asked to make or look at again in two weeks as  
18 part of this.

19 But I have a more immediate concern, and I don't like  
20 doing this to counsel by surprise, so I certainly will  
21 understand anyone who wants to take some time on it and it may  
22 not be that it warrants it. So I think last week I received in  
23 another matter, another case, the case is called -- in the  
24 Chapter 11 case of Hollister Construction, and I'm going to  
25 give you all docket numbers so that you can write it down.

1 The Hollister Construction case, the main case, is  
2 19-27439. And it's an adversary proceeding in that case, BAK  
3 Advisors v. SAX. And that adversary number is 21-1358.

4 Now that action is an accountant's malpractice  
5 action. That doesn't have a bearing on this. But there was a  
6 motion to withdraw the reference. And Judge Shipp entered an  
7 opinion that came down on August 16th. The opinion is in his  
8 civil action, 22-6035.

9 It's a short opinion, but it touches on the process  
10 that's used in this district when there are motions to withdraw  
11 the reference. And he reminded the parties, and I'll read from  
12 it: "As this court has previously held, it is appropriate to  
13 allow the bankruptcy court to make a determination of whether a  
14 claim is non-core in the first instance."

15 And he cites to actually a couple of my other cases,  
16 In re Princeton Alternative Income Fund and In re Kara Homes,  
17 where it says the core or non-core determination is a threshold  
18 factor in the withdrawal analysis and should be made in the  
19 first instance by the bankruptcy court. Here, the bankruptcy  
20 court has not yet been asked to determine whether the adversary  
21 proceeding is a core or non-core matter.

22 So I read this and it struck me, I wasn't sure how  
23 relevant it was to this matter, but I will throw it out. It's  
24 been the -- this is just one case. I can probably cite to you  
25 half a dozen other cases of mine where in a motion to withdraw

1 the reference, the district court first looks to see if there's  
2 been a determination for other matters, core or non-core.

3 Sometimes the parties consent and they agree in the pleadings.

4 More often they don't because the parties don't agree  
5 on anything. But the motions to withdraw the reference end up  
6 being denied and sent back and said go find out from the  
7 bankruptcy court first is it core or non-core. Now I'm pretty  
8 confident in reading the pleadings that the Committee believes  
9 this is a core matter that's facing us today as part of this  
10 adversary proceeding. I think they've said so.

11 I don't know. I would guess the United States of  
12 America disagrees.

13 MR. SHAPIRO: That's correct, Your Honor.

14 THE COURT: I want to clarify. I don't think I've  
15 been asked to make that decision, and I'm not sure as part of  
16 the motion to dismiss I've been asked to make that decision or  
17 if it's been briefed. So given this, we can argue this motion  
18 for a stay, but I'm wondering where the actual motion to  
19 withdraw the reference is going to go if that threshold  
20 determination hasn't been addressed.

21 I'm happy to make it not as part of argument today.  
22 I'm not asking you all to make those arguments today. But I'm  
23 wondering if the motion to stay is premature or what your  
24 respective thoughts are. And I know I'm throwing this on you,  
25 but this is what we do.

1           So I'll turn first to Mr. Shapiro and then to  
2 Committee's counsel. Any thoughts?

3           MR. SHAPIRO: That's a very fair question, Your  
4 Honor. And, in fact, in the briefing, there's not a lot of  
5 discussion of this, but we do take the position in the briefing  
6 that the action is essentially a collateral attack on a settled  
7 criminal forfeiture proceeding which has been disguised as an  
8 action based on the automatic stay.

9           And so we argue that it's non-core in that respect  
10 that the Committee is essentially arguing that the action is  
11 like a wolf in sheep's clothing, but in reality, we honestly  
12 believe that it is -- it's trying to change the substantive  
13 nature of what's being challenged here. And ultimately, we  
14 think the matter should be stayed until the district court has  
15 a chance to rule on the motion to withdraw the reference.

16           And I believe in the papers we've already submitted  
17 we have -- and there wasn't a lot of discussion of this, but  
18 there was discussion that the matters were non-core. And we  
19 don't think the Committee can use the automatic stay to either  
20 collateral attack or estop a criminal forfeiture because the  
21 criminal forfeiture itself is exempted from the automatic stay.

22           There are non-bankruptcy statutes, 18 U.S.C. 3231 and  
23 28 U.S.C. 1355 and 21 U.S.C. 853(k) and (n) on top of course  
24 the criminal statutes 18 U.S.C. 981 and '82 which deal with  
25 forfeiture proceedings which vest jurisdiction exclusively in

1 the district court with respect to forfeiture proceedings in a  
2 post-indictment situation such as what we have here vis-a-vis  
3 the criminal defendants who have not yet been extradited to the  
4 United States.

5           So while the Committee has tried to inject the flavor  
6 of core in the sense that they're arguing that the proceeding  
7 is a violation of the stay, we would argue that the proceeding  
8 is predominantly non-core and we don't consent to the  
9 jurisdiction of the bankruptcy court to make the determination  
10 with respect to those non-core claims. Thank you.

11           THE COURT: So my inquiry, and I appreciate your  
12 comments, my inquiry was whether I have enough in this motion  
13 or I should be looking to the motion to dismiss to decide  
14 whether it's core or non-core which seems to be a finding  
15 that's going to be critical before the district court is going  
16 to take up the withdrawal of the reference matter.

17           Let me turn to Ms. Dwoskin. What are your thoughts  
18 on what's been briefed and argued to date and where we should  
19 go?

20           MS. DWOSKIN: Your Honor, thank you. I appreciate  
21 the consideration of what the timing is here. As Mr. Shapiro  
22 pointed out, we think that both the DOJ and the Committee  
23 briefed this in our papers. I'm happy to argue the point  
24 today, Your Honor. Not surprisingly, I disagree with  
25 everything that Mr. Shapiro just said. And happy to walk Your

1 Honor through all of that.

2           The Committee doesn't have any problem with arguing  
3 that issue now and having the Court make that finding now, but  
4 I do understand that the DOJ's motion didn't actually ask Your  
5 Honor to make that finding. But for procedural purposes, we're  
6 here. We're before Your Honor. We've briefed the issues. And  
7 I think, frankly, we would have to cover those issues anyway to  
8 resolve the stay motion.

9           So from a procedural perspective and from a judicial  
10 economy perspective, Your Honor, I don't have any problem with  
11 arguing those issues today.

12           THE COURT: All right. Well, then, Mr. Shapiro,  
13 you're in agreement, at least not on the substance but as to  
14 the process of including in the argument today?

15           MR. SHAPIRO: Of course, unless Your Honor would  
16 prefer that we submit additional briefing as an aid to the  
17 Court. We would accommodate the Court's desires in that  
18 respect.

19           THE COURT: Well, the Court -- I had the luxury of  
20 having another motion on this in a few weeks as far as the  
21 motion to dismiss. But let me hear the argument. I gather no  
22 other parties wish to be heard on it.

23           So let me go back to you, Mr. Shapiro, it's your  
24 motion. Anything you wish to add to what's been included in  
25 your papers?

1 MR. SHAPIRO: Well, it seems to us that there is a  
2 likelihood of success on the motion to withdraw the reference.  
3 I don't want to reiterate all the arguments we've made in the  
4 papers. Your Honor has reviewed those. But a critical issue  
5 here relates to irreparable harm. And clearly, it's our burden  
6 to have to demonstrate that.

7 And we believe that if the Court were not to stay  
8 this proceeding and we were forced to go forward with it, that  
9 that would cause irreparable harm to the United States because  
10 the United States is not acting as a creditor here. We do not  
11 believe we are a creditor. We are a police power regulator  
12 exercising our criminal law rights to seize assets.

13 And so a decision to permit the proceeding to go  
14 forward before this Court or the district court as an  
15 opportunity to rule on the motion to dismiss would risk  
16 undermining the United States' ability to enforce criminal  
17 forfeiture laws in bankruptcy cases, notwithstanding Section  
18 362(b)(4) which in this case applies because the criminal  
19 action is not against the debtor so we had to rely on 362(b)(4)  
20 exception rather than the (b)(1).

21 No prior court has ever limited the Government's  
22 ability to enforce the criminal forfeiture laws in this type of  
23 factual and legal scenario. And so the Committee's theory, if  
24 it were adopted by the Court, would essentially allow criminals  
25 to use bankruptcy cases to avoid forfeiture and the proceeds of

1 alleged crimes --

2 THE COURT: But the criminal --

3 MR. SHAPIRO: -- would be unjustly distributed to  
4 creditors rather than to the federal crime victims. So we --

5 THE COURT: But the criminals didn't file this  
6 bankruptcy case. And how are they using it -- I guess I saw  
7 that in the brief that --

8 MR. SHAPIRO: Right.

9 THE COURT: But this was a case filed by a third  
10 party, not -- innocent third party.

11 MR. SHAPIRO: Right. But it still is attacking the  
12 seizure warrants against the assets of the -- which the debtor  
13 argues are assets of the criminals. And so if the Court were  
14 to inquire under 28 U.S.C. 1334(e)(1) that I have to determine  
15 as the judge whether or not these assets are property of the  
16 estate or not property of the estate and not simply dismiss the  
17 action because it should have never been filed in the first  
18 place under 21 U.S.C. 853 of the Criminal Code, that would take  
19 the cart before the horse.

20 Our view is that 28 U.S.C. 1334(e)(1) doesn't even  
21 apply because the action should have never been filed in the  
22 first place because there had been an indictment of the  
23 criminal defendants and the criminal law is pretty clear on the  
24 point that no action shall be filed vis-a-vis those assets in a  
25 post-indictment scenario.



1 And arguably, there is a difficult call here for Your  
2 Honor to make. We're trying to reconcile 28 U.S.C. 1334(e)(1)  
3 with the Criminal Code which on their faces appear to be  
4 somewhat inconsistent with each other in that they both seem to  
5 be giving exclusive jurisdiction to the separate courts. And  
6 I'm not saying there's a conflict per se, but it is not an easy  
7 call for Your Honor to have to make that decision about which  
8 should take priority over the other based on the facts and  
9 circumstances of this case.

10 THE COURT: Well, I appreciate that.

11 MR. SHAPIRO: We're just worried that --

12 THE COURT: I appreciate your saying that it's not an  
13 easy call because months ago it was an easy call. At least  
14 we've recognized the complexity here.

15 MR. SHAPIRO: Well, Your Honor, there is not -- if  
16 Your Honor has read the cases, you would see there is not a  
17 case that is on all fours directly on point in a situation  
18 where there is a motion to compel compliance with a seizure  
19 warrant and the Government does not have control or possession  
20 of the asset.

21 But, nevertheless, it's our view that under the  
22 Criminal Code, that this Court can't exercise the jurisdiction  
23 under 28 U.S.C. 1334(e)(1) because it is a criminal case and  
24 bankruptcy courts under 28 U.S.C. 1334 don't have jurisdiction.

25 So we're worried that even though Your Honor is

1 correct that this is -- that criminals are not the debtors  
2 here, we're worried that criminals will see this as an  
3 opportunity to basically file bankruptcy cases all over the  
4 country and then argue that 28 U.S.C. 1334(e)(1) somehow gives  
5 the bankruptcy court authority to say that those assets are  
6 property of their bankruptcy estate rather than property of the  
7 Government in a post-indictment situation.

8           And that's the kind of harm that the Government  
9 believes is irreparable. We also think that the criminal case  
10 itself against these particular defendants who have not yet  
11 been extradited from a foreign country, if the proceeding were  
12 allowed to go forward and discovery were allowed to be taken,  
13 it could jeopardize the criminal case against those defendants.

14           And so we're worried that information might be sought  
15 by the Committee or by the debtors that could somehow undermine  
16 that prosecution and that ultimately stop our ability to be  
17 able to obtain the forfeiture for the benefit of the crime  
18 victims down the road.

19           So I just wanted to make sure Your Honor understood  
20 where we're coming from on the irreparable harm argument. I  
21 mean the motion to withdraw the reference argument is pretty  
22 clear on its face that there are substantial material questions  
23 of federal criminal law which mandate withdrawal of the  
24 reference. You have the issues of whether the Washington  
25 District Court has exclusive jurisdiction over the seizure

1 warrants and orders, notwithstanding 1334(e)(1).

2           You have the issue of whether the federal criminal  
3 seizure law bars the proceeding and instead establishes an  
4 exclusive mechanism for third parties to assert their  
5 interests. You have the issue of whether the criminal law  
6 relation-back doctrine applies to the case as to whether or not  
7 to remove the assets at issue from becoming property of the  
8 estate.

9           And, ultimately, you even have really a bankruptcy  
10 law issue, too, which is -- because the proceeding appears to  
11 raise the question of whether or not property of the estate as  
12 defined in Section 541 of the Bankruptcy Code includes property  
13 subject to forfeiture in the criminal case or whether or not  
14 that property is property of the estate.

15           So we don't think there's any doubt that -- whether  
16 this is a core or non-core proceeding, whether it's a threshold  
17 issue or not. We don't think there's any doubt that the  
18 district court is going to withdraw the reference. The  
19 matter's been pending before Judge Kirsch I think for  
20 approximately two months now.

21           It could happen any day now. And with Your Honor's  
22 permission, perhaps we could let Judge Kirsch know that we're  
23 reaching a critical stage in the bankruptcy and we'd like to  
24 know if there's going to be a decision. I don't know to do  
25 that formally or informally, but it might be helpful to just

1 let him know that to see whether or not we can figure out  
2 whether or not we're going to get a decision anytime soon from  
3 him.

4           So those are those issues. And then, of course, to  
5 turn to the public interest question -- also, well, actually I  
6 skipped over the harm to Committee or the movant. There's a  
7 plan coming up for confirmation. We don't know yet whether or  
8 not the plan's going to be confirmed, but we are concerned that  
9 there could be a distribution as early as October or November  
10 which if we were to end up getting a partial summary judgment  
11 or some kind of summary judgment or ultimate judgment entered  
12 against the United States before then, that the Committee and  
13 the debtor might distribute the money.

14           And if we can't get a stay pending appeal of that  
15 confirmation order before the adjudication, we're worried that  
16 the Committee and the debtor might argue equitable mootness.  
17 And we would like to try to work out some arrangements. We  
18 haven't had a chance to address those with the Committee and  
19 the debtor yet.

20           But we'd like to put some provisions in the plan that  
21 basically make sure that this money is preserved post-judgment  
22 until there is an ultimate decision by an appellate court,  
23 because it would seem unfair to permit those monies to be  
24 distributed to the creditors over the crime victims when the  
25 creditors themselves were essentially investors and took a

1 known risk based on a contract that they might not get all  
2 their money back. Whereas, the crime victims had no idea what  
3 was going to happen to them.

4           So that's in that respect. And then on the last  
5 question about the public interests, well, again, that's  
6 another tough call for Your Honor to make. But it's fairly  
7 clear that criminal law and criminal proceedings should take  
8 precedence over bankruptcy proceedings and that Congress has  
9 made a specific mandate, it appears, that the public interest  
10 is best served when criminal and forfeiture laws do take  
11 precedence over the bankruptcy laws. They've created a method  
12 by which the proceeds should be distributed and anyone with an  
13 interest can appear in that post-conviction setting and make an  
14 argument as to why it is they should be entitled to that down  
15 the road.

16           It doesn't seem that if ultimately the monies get  
17 distributed in the criminal forfeiture proceedings, the people  
18 are not going to have their day in court. I mean they will.  
19 Ultimately, Your Honor, criminal proceedings are intended to  
20 punish the crime victims [sic] and ensure that the victims  
21 receive restitution. Bankruptcy proceedings are civil  
22 proceedings and are intended to give creditors an opportunity  
23 to recover money that they lost by basically entering into a  
24 business transaction.

25           It's not up to us to decide which should take

1 priority. It appears that Congress has already made that  
2 decision, and we would ask that Your Honor take that into  
3 account in ruling on the issue. At a minimum, we would ask  
4 that Judge Kirsch at least be given a period of time, perhaps  
5 up to the time of the hearing on the motion to dismiss, to rule  
6 on the motion to withdraw the reference to see whether or not  
7 he would want to be the judge to hear that motion rather than  
8 Your Honor. Thank you.

9 THE COURT: Before I turn to Ms. Dwoskin, Mr.  
10 Shapiro, I have further questions, but I want --

11 MR. SHAPIRO: Okay.

12 THE COURT: -- to give both sides an opportunity to  
13 speak. But is it the United States' intent if Judge Kirsch  
14 were to withdraw the reference to litigate this in New Jersey  
15 or is the next step to try to get it back to Washington and to  
16 change venue?

17 MR. SHAPIRO: We do not intend at the present time,  
18 Your Honor, to seek a transfer of venue back to Washington. We  
19 believe that the judge in Washington made it clear that he  
20 wanted the matters to first be adjudicated here on the East  
21 Coast either before Your Honor or before the district court  
22 judge. And unless there is a change of circumstances, which is  
23 somewhat significant and which we don't anticipate, we believe  
24 that the matter will get adjudicated here in the Third Circuit.

25 THE COURT: All right. Thank you.

1 Ms. Dwoskin?

2 MS. DWOSKIN: Thank you, Your Honor.

3 Let me address the question of whether it's a core  
4 proceeding first and foremost. We think the adversary  
5 proceeding is core because it asks the Court to enforce the  
6 automatic stay against the United States that seeks a turnover  
7 of estate property. That's a core proceeding under  
8 157(b)(2)(B). And as Mr. Shapiro pointed out, this Court has  
9 exclusive jurisdiction under 28 U.S.C. 1334(e) as to what is  
10 and what is not property of the estate.

11 And, Your Honor, we go through in our papers how  
12 there's a strong presumption against withdrawal of the  
13 reference for core proceedings and that none of the Pruitt  
14 factors support overcoming the presumption against withdrawal.  
15 I won't go through those here, Your Honor, mostly because the  
16 DOJ doesn't challenge them.

17 But the United States' claims are jurisdictional,  
18 right, and they're the same claims raised in their stay motion,  
19 in their withdrawal motion, and in their motion to dismiss.  
20 And those claims are that they're likely to succeed on the  
21 merits of this motion because the adversary proceeding raises  
22 criminal law issues, including whether as Mr. Shapiro just  
23 pointed out 18 U.S.C. 3231 which gives district courts  
24 jurisdiction over offenses against the United States and 21  
25 U.S.C. 1355 which gives district courts jurisdiction over

1 criminal forfeiture proceedings a strict view of jurisdiction  
2 over this adversary proceeding.

3 I want to take some time, Your Honor, to walk through  
4 this because it is a complicated issue. I want to separate the  
5 apples from the oranges here, Your Honor, because I think that  
6 while the United States has certainly raised a host of criminal  
7 law issues, we don't think that resolution of the adversary  
8 proceeding requires Your Honor to resolve any of those issues.  
9 And at best, it asks for a straightforward application of  
10 settled law.

11 And the reason, Your Honor, is this and I want to be  
12 very clear. We've said this over and over again in our papers.  
13 We are not challenging enforcement of the seizure warrants.  
14 We're not seeking to enjoin the criminal proceeding. We're not  
15 seeking to enjoin the criminal forfeiture proceeding. We're  
16 seeking to prevent the United States from taking assets that  
17 are not subject to forfeiture under Section 853, that are not  
18 named in the seizure warrants, that never belonged to the  
19 criminal defendants, that were never the criminal defendants'  
20 property.

21 We're seeking to prevent them from obtaining those  
22 assets which properly should go to other creditors of the  
23 debtors. All the forfeiture statutes allow the United States  
24 to do, which they have admitted in their papers, is stand in  
25 the shoes of the criminal defendants who are unsecured



1 creditors of BlockFi. We're just trying to keep them in those  
2 shoes, and that doesn't require any challenge of the seizure  
3 warrants. They can have their unsecured claim. It doesn't  
4 require enjoining the forfeiture proceeding. The forfeiture  
5 proceeding can continue.

6 At best, it's a straightforward application of the  
7 criminal forfeiture statute. And I want to walk through that  
8 statute first specifically, Your Honor. As a bankruptcy  
9 lawyer, right, criminal forfeiture is not something that I see  
10 every day, so I think it would be helpful to just walk through  
11 exactly why there's this dispute, Your Honor, between the  
12 Committee and the Government, if that's okay.

13 THE COURT: Absolutely.

14 MS. DWOSKIN: So, thank you, 853(a) defines property  
15 subject to forfeiture as one of four things. We think there's  
16 two that are really relevant here, but just in the interest of  
17 completeness, the first of that is property that the criminal  
18 defendants obtained as a result of the crime. The second is  
19 proceeds of that property, right, property derived from what  
20 they obtained. And the third is property used to commit the  
21 crime, which we don't think is relevant. And the fourth is, in  
22 the case of a criminal enterprise, interest in or claims  
23 against that criminal enterprise. Again, we don't think that's  
24 relevant.

25 The seizure warrants are in line with this, Your

1 Honor. The seizure warrants permit the United States to seize  
2 from BlockFi all funds including virtual currencies from the  
3 subject accounts. And, again, the criminal forfeiture statute  
4 is about what the criminals have to forfeit to the United  
5 States, not what BlockFi has to forfeit to the United States,  
6 right. The criminals have to forfeit to the United States the  
7 property subject to forfeiture, and the United States can seize  
8 from BlockFi what was named in the seizure warrants all funds  
9 including virtual currencies from four subject accounts of the  
10 criminal defendants.

11 So that could mean, Your Honor, only one of two  
12 things, assuming that the seizure warrants in fact comply with  
13 853, which we're not suggesting they don't. It could mean the  
14 actual crypto that the criminal defendants deposited at  
15 BlockFi. Now the Committee's alleged that BlockFi no longer  
16 has that crypto in full or in principal part. And the United  
17 States hasn't conducted any kind of tracing exercise, and we  
18 don't expect that they will. So it could mean that, right.

19 The other thing that it could mean, we think it does  
20 mean, is the property interests of the criminal defendants  
21 derived from their deposit and that's their unsecured claim  
22 against BlockFi. We think that's what the seizure warrants  
23 permit the United States to take. And that application I think  
24 is a fairly straightforward application of the forfeiture  
25 statute.

1           It's supported by case law that we cite in our  
2           briefs, including the Ninth Circuit's Lester case, and that's  
3           at 85 F.3d 1409. And that case stands for the proposition that  
4           where property subject to forfeiture is not connected to  
5           criminal activities, only the property interest of the  
6           defendant is subject to forfeiture. And the Western District  
7           of North Carolina Bailey case, and that's 926 F.Supp.2d. 739,  
8           whereby in forfeiture proceeding, the Government acquires only  
9           the defendants' interest in property. There's plenty of other  
10          case law, Your Honor, that both we and the United States cite  
11          in our briefs, but in essence, right, the criminal -- the  
12          Government only gets to stand in the criminal defendants'  
13          shoes.

14                 And by the way, Your Honor, that's also supported by  
15          the United States' own filings through the FDIC in the SVB case  
16          where they argue that when a person makes a deposit in a bank,  
17          all they have is an unsecured claim against that bank, right.  
18          And to the extent that the bank is solvent, which they often  
19          are, the United States if they conveniently have a seizure  
20          warrant against the bank and a forfeiture action against the  
21          defendant, they can get paid in full. But all they have is an  
22          unsecured claim.

23                 The same is true here. All of BlockFi's customers  
24          including the criminal defendants are unsecured creditors, and  
25          all Section 853 allows the United States to do is take the

1 crypto that it can trace to the crime, it can trace that -- if  
2 it can trace that crypto to Alameda and it can get a seizure  
3 warrant against Alameda, it can take it from them. They can  
4 trace it to wherever it is, it can go take that.

5           We have alleged that BlockFi doesn't have it. Or it  
6 can step -- and/or, I suppose, it can step into the criminal  
7 defendants' shoes and take their property interest at BlockFi,  
8 and that's their unsecured claim. And that's why, Your Honor,  
9 the debtors already turned over the funds that were in the  
10 criminal defendants' Wallet accounts. The Committee had no  
11 objection to that, right. Those funds were never BlockFi's  
12 property. They were always property of the criminal  
13 defendants. It's very clear, right, the seizure warrants  
14 permit that to be turned over.

15           So the question that the adversary proceeding is  
16 seeking Your Honor to resolve is, in order to enforce the  
17 seizure warrants, is what is the criminal defendants' interest  
18 in BlockFi's property. Only this Court has the jurisdiction to  
19 decide what the criminal defendants would be entitled to  
20 receive from BlockFi on account of the assets that they  
21 deposited in the subject accounts.

22           And that's also a core issue under 157(b)(2)(B) which  
23 talks about allowances of claims. And, again, you only need a  
24 straightforward application of the criminal forfeiture law to  
25 decide that the United States can't get more from BlockFi than

1 what was property of the defendants.

2 I want to talk, Your Honor, about the relation-back  
3 doctrine which Mr. Shapiro gestured that earlier and which is  
4 in their papers. But let me pause because that was a lot and I  
5 want to see if Your Honor has any questions.

6 THE COURT: No, I'm fine. I'm following.

7 MS. DWOSKIN: Okay, great.

8 So, Your Honor, the United States claims that this  
9 relation-back doctrine applies to prevent the criminal  
10 defendants' property from becoming property of the estate and,  
11 therefore, this Court lacks jurisdiction over it. That  
12 language, Your Honor, comes from cases where the criminal  
13 defendants are debtors, right; only from those cases. Where a  
14 criminal defendant is a debtor and the crime predates the  
15 bankruptcy filing, the United States's interest in that  
16 property dates back to the commission of the crime and is  
17 senior to the interest of the estates. It doesn't injure the  
18 estates at all.

19 There's no disconnect there between that and what's  
20 going on here. The relation-back doctrine really doesn't move  
21 the needle at all. That doctrine only applies to tainted  
22 property, again, the property used in the crime or the proceeds  
23 that the United States can trace to the crime. And all it does  
24 is it provides that the United States' interest in that  
25 property subject to forfeiture, not property that's not subject

1 to forfeiture dates to the commission of the crime and it's  
2 senior to the interests that other creditors of the criminal  
3 defendants, not other creditors of the debtor might have.

4           So the relation-back doctrine is really just about  
5 whose interests are senior to whose. It's not a DeLorean,  
6 right. It's not a time machine. It can't take the United  
7 States back to a universe where BlockFi didn't rehypothecate  
8 the criminal defendants' crypto, where it didn't put its assets  
9 in FTX or Alameda, where FTX and BlockFi didn't fail, where  
10 BlockFi didn't file for bankruptcy, right. We can't go back in  
11 time.

12           What it says is if someone else has interests in the  
13 criminal defendants' property interest at BlockFi, the United  
14 States' interest dates back to the commission of the crime.  
15 But here, the Committee's not asserting an interest in the  
16 property that belongs to the criminal defendants and neither, I  
17 don't think is the defendants, right. We are trying to prevent  
18 the United States from seizing assets that belong to other  
19 people that are not subject to forfeiture under a  
20 straightforward application of 853(a).

21           And I want to walk Your Honor through a hypothetical  
22 because we've been tossing around this issue for months now.  
23 But it is fairly complicated. So let me raise this  
24 hypothetical if I can, right. If a criminal steals a blue  
25 Jeep, okay, and gives it to me to hold on to and I sell it and

1 I gamble away the proceeds, that doesn't give the Government  
2 the right to take any car or any blue Jeep that happens to be  
3 in my possession, right. If my sister had a blue Jeep that she  
4 also gave me to hang on to, the Government can't take my  
5 sister's blue Jeep just because it wants one. That's not  
6 property obtained in the crime, and it's not proceeds from the  
7 crime.

8           They only have the right to take assets that are  
9 subject to forfeiture and I no longer have that asset, okay.  
10 They can take the blue Jeep if they can find it from whoever I  
11 sold it to, right, or they can take the criminal's claim  
12 against me for conversion if they have one. But they can't  
13 take my sister's Jeep. And we think that, Your Honor, that's  
14 what they're trying to do. The relation-back doctrine doesn't  
15 let them do it. It just gives the United States seniority as  
16 to other individuals who might have competing interests in the  
17 criminal defendants' property. That's not what's at issue  
18 here.

19           I also want to address, and I'll try to do this  
20 briefly, Your Honor, the suggestion that the only way for the  
21 estates and the Committee and creditors to assert their  
22 interests in the property the United States is seeking to seize  
23 is through 21 U.S.C. 853(n) and that they're forbidden from  
24 doing so. This adversary proceeding is somehow forbidden by 21  
25 U.S.C. 853(k). Neither is applicable here and neither is true.

1           There is absolutely no basis for the United States'  
2 contention that the debtors, the Committee, and BlockFi's  
3 innocent creditors have to go to criminal court in the Western  
4 District of Washington to assert their interests in property  
5 that never belonged to the criminal defendants, that the United  
6 States has not traced to the crime, and that is not named in  
7 the seizure warrants.

8           Sections 853(k) and (n) again only apply to property  
9 subject to forfeiture, that is the property the criminal  
10 defendant obtained from the crime or proceeds of that property.  
11 853(k) says that no party claiming an interest in that property  
12 subject to forfeiture can commence an action of law or equity  
13 against the United States concerning that validity except  
14 pursuant to 853(n) which provides the procedures for doing so.

15           But, again, neither the debtors nor the Committee nor  
16 any other parties asserting an interest in the property at  
17 BlockFi that belongs to the criminal defendants. The United  
18 States can have it. We're not challenging that. We're not  
19 challenging that the United States can take possession of the  
20 criminal defendants' unsecured claim. I'm sure the debtors  
21 would agree to pay that claim over to the United States.

22           Their interests, right, the debtors' and the  
23 Committee's interest and the unsecured creditors' interest, is  
24 not in funds from the criminal defendants' accounts but rather  
25 in funds from their own accounts, right. The amount that they



1 will not receive if BlockFi pays to the United States the  
2 criminal defendants' claim in full in kind.

3           Neither the debtors nor the Committee nor the  
4 creditors could use 853(n) because they're not claiming an  
5 interest in property, and so 853(k) doesn't apply. There's no  
6 law, Your Honor, that says that the United States can seize  
7 whatever it wants from a third party and then bar that third  
8 party from challenging the seizure. That's a clear violation  
9 of the Fourth Amendment, and we think the canon of  
10 constitutional avoidance dictates that we shouldn't read 21  
11 U.S.C. 853 to suggest that, right.

12           No one has shown up with competing interest in the  
13 criminal defendants' property. If that happened, Your Honor,  
14 that would be a case in which the bankruptcy court would not  
15 have jurisdiction and that dispute should be heard by the  
16 criminal court. But that's not what's happening here.

17           So because there's really only a straightforward  
18 application of the criminal forfeiture statute, we think the  
19 United States is unlikely to succeed on the merits. And I'll  
20 move on to harms and public interest but, again, I've been  
21 talking for a while, Your Honor, so I'll let you -- I'll take a  
22 sip of water and see if you have any questions.

23           THE COURT: Take your sip of water. I'll save my  
24 questions for the end.

25           MS. DWOSKIN: Okay. With respect to the harm, the

1 United States suffered no harm if the stay is denied. There's  
2 no duplication of effort or briefing whether this Court or  
3 Judge Kirsch ultimately decides the adversary proceeding. And,  
4 again, as Your Honor noted, right, even if the district court  
5 did decide to withdraw the reference -- or maybe Your Honor  
6 didn't know this -- it's very likely that this Court would be  
7 remanded the adversary proceeding to decide pretrial matters or  
8 for recommended findings of fact and conclusions of law.

9           And even if the Court or the -- even if this Court  
10 ultimately decides the adversary proceeding against the  
11 Government and even if, as Mr. Shapiro notes, the estates make  
12 a distribution to the Government for something less than the  
13 notional balance of the criminal defendants' accounts, the  
14 Government is not without remedy, right. There's no  
15 irreparable harm here.

16           The Government is permitted by Section 853(p) (2) to  
17 seize substitute property from the criminal defendants, not  
18 from the debtors but from the criminal defendants. So the  
19 Government can get what they want.

20           But contrast, the estates and the Committee will  
21 suffer harm if we continue to wait. The assets that are  
22 subject to the adversary proceeding are not going to be  
23 distributed until there's a ruling. We already have a  
24 stipulation as to that effect by the Government, not with  
25 respect to any appeal, right. We don't think that's fair. But

1 we've left that issue open for further negotiation with the  
2 Government.

3           The Chapter 11 case has progressed to solicitation;  
4 confirmation is in a few weeks. And any stay could delay  
5 BlockFi's customers from receiving what they're due. Frankly,  
6 Your Honor, we think the creditors have waited long enough and  
7 that there's really no reason for any further delay here.

8           And just with respect to public interest, we agree  
9 with the United States that there's a public interest in each  
10 court exercising the jurisdiction that's granted to it by  
11 Congress. This Court can decide what is and what isn't  
12 property of the estate. It can decide whether the Government  
13 is subject to the automatic stay or whether it's exercising its  
14 police power. We think it's not.

15           And we've briefed that issue: what constitutes funds  
16 from the criminal defendants' account to BlockFi and what the  
17 value of the criminal defendants' unsecured claim is. And  
18 that's all that's at issue in the adversary proceeding despite  
19 the strawman and red herrings that the Government is trying to  
20 introduce.

21           So for those reasons, Your Honor, first of all, we  
22 think that this is a core proceeding and, secondly, we don't  
23 think that the United States has met their burden to show that  
24 a stay is warranted.

25           THE COURT: Thank you, Ms. Dwoskin. I appreciate the

1 arguments.

2           Mr. Shapiro, before you respond, let me ask a  
3 question. You had raised and referenced public policy,  
4 congressional intent. I think we would agree that absent a  
5 criminal prosecution, the two criminal defendants who had  
6 deposited with BlockFi as collateral and in interest accounts  
7 their digital currency would have now a claim in this  
8 bankruptcy.

9           I think you would agree with me that they would be  
10 creditors just like any other -- actually, just like a creditor  
11 that -- I just pulled one of the hundreds of emails I received,  
12 a creditor I'll just use the initials T.S. who is in the UK  
13 whose entire retirement account or most of his or her funds  
14 were with BlockFi in an interest account. A creditor, and  
15 unfortunately these creditors are not going to get paid in full  
16 even under the proposed plan.

17           But absent a criminal prosecution, the two criminal  
18 defendants would be creditors entitled to share pro rata with  
19 all the other creditors. Doesn't it seem perverse that -- and  
20 that was a term used by the Committee in their briefs, but I  
21 think it's applicable -- that because these two defendants  
22 actually engaged in criminal activities, they would get more in  
23 effect. And I say they, now it's the United States that steps  
24 into their shoes through the forfeiture or is attempting to  
25 step into their shoes through the forfeiture.

1 I think it's uncontestable that the law provides that  
2 in a forfeiture, the United States does not get greater rights  
3 than the criminal defendants, but that's actually what is  
4 happening. If I follow the argument of the United States, and  
5 I have to say I mean I'm going to listen to the motion to  
6 dismiss and I will probably reserve today, but I am taken aback  
7 that following the Government's argument, the Government now  
8 actually steps in front of or higher up on the priority scheme  
9 than the other general unsecured creditors because the  
10 defendants engaged in criminal action. That seems to be an  
11 extraordinary proposition.

12 I looked at 507. I'm pretty familiar with Section  
13 507 of the Code. I don't see Congress ever giving a priority  
14 in distribution to criminal defendants, but that's in effect  
15 what we're doing here. And along the same lines, it would seem  
16 that for every dollar in forfeiture that is obtained by the  
17 United States is a dollar less going to all the other general  
18 unsecured creditors.

19 And when we talk about the policy of forfeiture and  
20 restitution and the like, what's happening here is that  
21 essentially unless the Government traces the actual digital  
22 coins into property of the bankruptcy and to accounts that are  
23 held by BlockFi, because that's a different issue and I agree  
24 those are subject to forfeiture.

25 But absent that tracing ability, what's really

1 happening is T.S. in Europe and the other several hundred  
2 thousand creditors, they're all chipping in to pay the  
3 forfeiture obligations of these two criminals. That can't be  
4 public policy that we have innocent creditors of a debtor  
5 actually paying the forfeiture obligation. I think that would  
6 be great for the criminals' perspective that somebody else is  
7 going to pay their obligations.

8 I mean this is what the challenge is, and it's hard  
9 to reconcile. It also is hard to reconcile that we would make  
10 that individual from London or any of the other few hundred  
11 thousand all trek to Washington, as gorgeous as it is, on the  
12 West Coast to contest the loss of their rights and recovery  
13 here. So with that framework, you can respond to my inquiries  
14 and also Ms. Dwoskin's.

15 MR. SHAPIRO: Okay. I understand your concerns, Your  
16 Honor. But I think that they're taking the cart before the  
17 horse, with all due respect. If Your Honor looks at the  
18 GuildMaster case at 2013 WL 1331392, the Thena case,  
19 Diversified Fiber Products v. USA, at 190 B.R. 407. And even  
20 the US v. Pena-Fernandez case we cited at 377 F.Supp.3d. [sic],  
21 you'll see that our argument, Your Honor, is that the  
22 proceeding shouldn't go forward in this Court because this  
23 Court has no jurisdiction.

24 And both in GuildMaster and in the Thena case, and I  
25 believe also in Diversified Products, the court -- well, that

1 is the Thena case, Diversified Products, that the court  
2 basically found that the property wasn't property of the  
3 estate, that the case should be dismissed and the matter should  
4 be sent back to the criminal court in this post-indictment  
5 situation.

6           So as I indicated earlier, while we don't intend to  
7 transfer venue, we of course are still going forward with our  
8 motion to dismiss. And if Your Honor or the district court  
9 ends up granting that motion, ultimately, we would be  
10 litigating these issues in the criminal court in Washington  
11 where we think Congress intended it to be litigated.

12           And while Your Honor makes a point that it seems from  
13 Your Honor's perspective unfair to have all these people from  
14 all over the world having to go to Seattle, I mean the same  
15 could be said about New Jersey. I mean it doesn't -- there's  
16 no difference there. I mean they have to get litigated in a  
17 court that has jurisdiction.

18           Now the other thing I would point out is that under  
19 28 U.S.C. 1334(e)(1), which is the statute that the Committee's  
20 counsel relies upon, that statute does not indicate that the  
21 bankruptcy court shall have jurisdiction, exclusive  
22 jurisdiction of all property. It specifically says literally  
23 the district court in which a case under Title 11 is commenced  
24 or is pending shall have exclusive jurisdiction. Now while --

25           THE COURT: Well, that's because bankruptcy courts

1 don't have subject matter jurisdiction. It's all referred to  
2 from the district court. There is no independent bankruptcy  
3 court jurisdiction, and it flows through the order of  
4 reference. We know that.

5 MR. SHAPIRO: I understand you were going to make  
6 that point, Your Honor, and I'm prepared to address it.

7 So our view is that the order of reference does not  
8 permit the district court to refer the matter to Your Honor  
9 because criminal cases are not within the jurisdiction of the  
10 bankruptcy court. And if Your Honor looks at, for example, 28  
11 U.S.C. 1334(b) of that same statute, it talks about civil  
12 actions. Congress conferring exclusive jurisdiction on a court  
13 or courts other than the district courts, the courts shall have  
14 original but not exclusive jurisdiction of all civil  
15 proceedings, not criminal.

16 And in (e), Congress, it answered the question there  
17 about whether or not the district court has the authority to  
18 refer criminal cases or criminal forfeiture matters to the  
19 bankruptcy court. But we believe that they don't have that  
20 authority because there has to be a grant of jurisdiction  
21 somewhere with respect to a criminal case. And it's not in 28  
22 U.S.C. 1334(b).

23 THE COURT: I think I would agree with you. But  
24 isn't the present matter, the present adversary proceeding a  
25 civil matter?



1 MR. SHAPIRO: It's a civil matter, but the action --

2 THE COURT: That's what's being sought to be stayed.  
3 That's what's being sought to be withdrawn.

4 MR. SHAPIRO: No, but the action in the Washington  
5 district court which is what we are arguing that the Creditors'  
6 Committee is trying to basically move, magically transform a  
7 criminal forfeiture proceeding into a civil action in the  
8 bankruptcy court. This is not -- we're arguing this is not a  
9 civil proceeding.

10 This is the Creditors' Committee trying to magically  
11 turn a criminal forfeiture proceeding into an action accusing  
12 the Government of violating the automatic stay when they've  
13 admitted themselves that the automatic stay doesn't apply under  
14 Section 362(b)(4). So if it doesn't apply, how does this Court  
15 then have the jurisdiction to determine that we violated?

16 THE COURT: Aren't they saying go ahead with the --

17 MS. DWOSKIN: Can I respond to --

18 THE COURT: Aren't they saying go ahead with the  
19 criminal prosecution, just leave the debtors' assets out of it  
20 and the assets belonging to the 600,000 people?

21 MR. SHAPIRO: If these assets were permitted to be  
22 seized under the seizure warrants, Your Honor, they would sit  
23 in the Washington district court until after the criminal  
24 defendants were extradited, there would be a conviction or a  
25 guilty plea, there would then be a criminal forfeiture

1 proceeding down the road, and everyone could fight it out down  
2 the road in the Washington district court. So -

3 MS. DWOSKIN: Can I respond, Your Honor? I'm sorry.

4 THE COURT: Well, I'll let you respond because I'm  
5 going to keep quiet for now and let Mr. Shapiro finish.

6 MR. SHAPIRO: Okay. I wasn't finished with my other  
7 arguments, but go ahead. Ms. Dwoskin, go ahead.

8 MS. DWOSKIN: Your Honor, no, please Mr. Shapiro,  
9 finish and I'll respond.

10 THE COURT: Mr. Shapiro, finish your arguments. I'm  
11 going to stay out, and then we'll let Ms. Dwoskin continue.

12 MR. SHAPIRO: Okay. All right. Thank you, Your  
13 Honor.

14 So Your Honor made the point about there not being a  
15 provision in Section 507 of the Bankruptcy Code giving crime  
16 victims any kind of priority. We would argue that that is a  
17 reflection that these proceedings were supposed to be  
18 determined in the district court in the criminal cases. And as  
19 far as tracing this concern, we have traced, Your Honor, all  
20 the way up to the day the seizure warrants were issued.

21 Whether anything happened within the 12 days between that  
22 day and the day of the petition date, we're looking at that, as  
23 well. We think we know the answer. We don't have the answer  
24 yet about what happened post-bankruptcy, but there's been some  
25 discussion on the record in this Court about what happened

1 generally with all the assets in BIA accounts.

2 But we think the issue of the tracing is a red  
3 herring, Your Honor. We don't think Your Honor needs to even  
4 get into tracing because that's an issue for the federal  
5 district court in the criminal case. And all Your Honor would  
6 have to do is dismiss this action and send it back there for  
7 the criminal court judge to decide because, effectively, what  
8 the Committee is asking Your Honor to do with all due respect  
9 is to determine the scope and the enforceability of those  
10 criminal seizure warrants in a bankruptcy court.

11 And that's, we argue, the bankruptcy court has no  
12 jurisdiction under 28 U.S.C. 1334(e) (1) or otherwise or 21  
13 U.S.C. 853(k). This Court just doesn't have that jurisdiction,  
14 and we would therefore respectfully request that Your Honor  
15 ultimately dismiss this action and stay it until after Your  
16 Honor has had an opportunity to review and decide what this  
17 Court would do on the motion to dismiss if the reference is not  
18 withdrawn before September the 21st, at which time perhaps the  
19 district court would rule on the motion to dismiss. So thank  
20 you.

21 THE COURT: Thank you, Your Honor.

22 MR. SHAPIRO: If Your Honor has any other questions,  
23 please let me know.

24 THE COURT: No, I appreciate it. Thank you,  
25 Mr. Shapiro.

1 Ms. Dwoskin.

2 MS. DWOSKIN: Yes, Your Honor.

3 THE COURT: Last responses.

4 MS. DWOSKIN: Yes, Your Honor.

5 As to the cases that Mr. Shapiro mentioned, those are  
6 all I believe possibly with the exception of the Pena-Fernandez  
7 case, but I don't believe so, Your Honor, cases where the  
8 defendants were the debtors. So, of course, if the crime  
9 happened before the bankruptcy case, the property doesn't enter  
10 the estate.

11 The Pena-Fernandez case involved a counterparty to a  
12 franchise agreement, I think it was a Subway franchise  
13 agreement, that was held by the criminal defendants in that  
14 case. And the ruling of the court was that the United States  
15 steps into the shoes of the defendant but not the whole  
16 contract, right. They don't get the part that belongs to the  
17 non-criminal defendants.

18 And, Your Honor, with respect to whether we're using  
19 this as a collateral attack on the criminal forfeiture  
20 proceeding, we're not. We don't have any problem with the  
21 criminal forfeiture proceeding going ahead. The question is,  
22 and we don't have any problem with the seizure warrants.  
23 Again, all we think the seizure warrants allow the Government  
24 to take is the assets named in the seizure warrants themselves,  
25 right, the funds from the subject accounts.

1 Now the question is what does that mean and who gets  
2 to decide it, right. And I want to just -- let's just play  
3 through this thought experiment. If it were in fact up to the  
4 Washington district court to decide what all funds from the  
5 subject accounts mean, in other words, what the criminal  
6 defendants would be entitled to receive from BlockFi, that  
7 would in essence, Your Honor, transpose this entire bankruptcy  
8 proceeding to the district court.

9 And we don't think that that's what the criminal  
10 statute allows for. Rather, I think it's very clear on its  
11 face that it requires individuals with competing interests in  
12 the assets subject to forfeiture to resolve those proceedings  
13 in the district court in the manner that Mr. Shapiro described.

14 So whether the -- there is a clear venue statute here  
15 also, Your Honor, and debtors can file bankruptcy where the  
16 venue statute permits them to. And the idea is that that takes  
17 into account where their creditors are. But it's not the case  
18 that the individual creditors of BlockFi have claims against  
19 the criminal defendants. Vice versa, right.

20 And so with respect to the crime victims, those crime  
21 victims need to be compensated from the criminal defendants'  
22 property. The sooner we get this resolved, the sooner the  
23 debtors can turn that property over to the Government, which we  
24 are not standing in the way of. They can turn that property  
25 over to the Government, and the Government can distribute it as

1 what it is such as it is to the criminal defendants.

2 So there is really no challenge to the adversary  
3 proceeding with respect to the scope of the seizure warrants.  
4 We think they're clear on their face. We think that only you  
5 have jurisdiction to figure out what that claim is and what the  
6 distribution that the criminal defendants through the United  
7 States are going to receive on account of their claim. And  
8 that's all I have, Your Honor.

9 THE COURT: All right.

10 MR. SHAPIRO: Your Honor, may I just respond to that  
11 one point?

12 THE COURT: Yeah, absolutely.

13 MR. SHAPIRO: Okay, thank you, Your Honor.

14 I think it would be important, the Court has probably  
15 already done this but take a close look at the Pena-Fernandez  
16 case. In that case, the relation-back doctrine in Section 553  
17 provided that all the rights, title, and interest in the  
18 property subject to forfeiture vested in the United States upon  
19 the commission of the act giving rise to the forfeiture, citing  
20 21 U.S.C. 853(c) in that case.

21 And Section 853 permits the United States not just to  
22 step into the criminal defendants' shoes but to acquire the  
23 rights that he possessed at the time of the criminal acts. And  
24 so the criminal acts in this case occurred well before the  
25 petition date. And during that time period, the Government had

1 the right to all the money.

2 See, according to Ms. Dwoskin, we only have the right  
3 to be unsecured creditor by subrogation. We're not a creditor.  
4 We're a regulatory police power governmental unit exercising  
5 our right to seize an asset in a criminal case, and there is  
6 not a single case -- Your Honor, I spent over a week  
7 researching it myself -- where the United States Government has  
8 been declared a creditor in a criminal case where we've been  
9 trying to seize an asset.

10 Your Honor would be the first court to ever make that  
11 kind of a determination. And with all due respect, we think it  
12 would be incorrect if the Court were to be allowed to do that.  
13 And we certainly would be, if Your Honor made that sort of  
14 decision, we certainly would be appealing that to the district  
15 court if not beyond.

16 And I do understand Ms. Dwoskin's argument as to her  
17 view about her not challenging the warrants, but the truth is  
18 that if this Court is asked to determine whether or not a  
19 portion of those account, what the Government is trying to  
20 seize, is property of the estate, that's a direct interference  
21 with the criminal action and forfeiture proceeding.

22 So they do conflict with each other in that respect.  
23 And that's why Your Honor's job is very difficult in figuring  
24 out which one of these two jurisdictional provisions governs in  
25 the situation like this where you have the Criminal Code

1 clearly saying these matters should only be adjudicated in a  
2 federal district court in a criminal case and then, of course,  
3 under 28 U.S.C. 1334(e)(1) saying the matter should be also  
4 decided in a district court but many bankruptcy lawyers believe  
5 that's an automatic referral to the bankruptcy judge.

6           We would argue that's not the situation in criminal  
7 cases because under 28 U.S.C. 1334(b) and otherwise, the  
8 Court's jurisdiction doesn't extend to criminal actions and  
9 forfeiture proceedings. Congress vested the exclusive right to  
10 determine the outcome in those criminal forfeiture proceedings  
11 and the scope of criminal warrants in federal district courts,  
12 not in bankruptcy courts. Thank you, Your Honor.

13           THE COURT: Let me just -- thank you, Mr. Shapiro.

14           But let me just address something you said. So it's  
15 the position of the Government that as of the commission of the  
16 crime, the United States was entitled to all of the forfeited  
17 assets, the monies that the criminal defendants had deposited  
18 with BlockFi, which makes sense, and would be entitled to all  
19 of their money back.

20           How does that differ from any other creditor up until  
21 the date the petition was filed and the moment the petition was  
22 filed or one could argue the -- well, the pause went into place  
23 -- but as of the date of the petition, all creditors are  
24 entitled to all their money that they had deposited and was  
25 reflected. But all that changed on the date of the filing.



1 How does the United States get a leg up over every other  
2 creditor on the date of the filing?

3 MR. SHAPIRO: The answer to that question is that the  
4 Government has the benefit of the relation-back doctrine and  
5 the right to seize an asset under criminal law, which creditors  
6 do not have. They don't have the right to argue that their  
7 right vests back into the time that they were wronged. They  
8 only can argue what their claim was on the petition date.

9 THE COURT: But you all had the same --

10 MR. SHAPIRO: We can argue our claim -- we can argue  
11 that our right to seize that asset and have the accounts turned  
12 over to the Government goes back all the way to the time that  
13 crime was committed.

14 THE COURT: I'll give you that.

15 MR. SHAPIRO: And we're ready, willing, and able to  
16 face that in a district court in the criminal case.

17 THE COURT: I'll give you that, that on the moment  
18 prior to the petition, you're entitled to all of it as was  
19 every other creditor. My problem is once the petition is filed  
20 and now when it's clear that there isn't enough money to pay  
21 everyone, on what basis has your position changed that you now  
22 are ahead in priority of the other creditors?

23 And I would understand if you could actually say that  
24 a specific asset and identify it. But what I'm hearing is that  
25 nobody can identify the specific assets at this juncture. They

1 were all BlockFi during the course of its business hypothecated  
2 and rehypothecated and pledged these assets. And certainly  
3 prior to the filing, they were all liquidated into cash and  
4 that you've already received the Wallet accounts where there  
5 was an ability to segregate.

6 So how does the Government get that next step?

7 MR. SHAPIRO: Maybe I didn't make myself clear, Your  
8 Honor. The point I was trying to make is that the Government  
9 has the right to go back in time. The relation-back doctrine  
10 is essentially a time machine. It lets us basically have a  
11 right to seize an asset over creditors in a civil case because  
12 the criminal law gives us a right that no one else has. And so  
13 it effectively would give the Government if we're forced to  
14 have to plead it a kind of constructive trust over the assets  
15 as they existed at the time the crime was committed.

16 But that concept doesn't necessarily -- constructive  
17 trusts I understand are not that loved by bankruptcy courts.  
18 But that's the theory, right, is that if the relation-back  
19 doctrine applies in a case where the wrongdoer is not the  
20 debtor, then the Government has the right to go back in time to  
21 trace the asset from the time the crime was committed up until  
22 -- and at that point in time, if we can trace it where it was,  
23 then we have the right to get it.

24 There was also some confusion at the beginning of the  
25 case, Your Honor, of course, like with BlockFi representing the

1 money was there but then there were some proceedings later on,  
2 some clarifications that they indicated that it wasn't there.  
3 What our concern is not what it was on the petition date. Our  
4 concern is under the criminal law what was it when the criminal  
5 actions were committed. What was it when the accounts were  
6 opened, which was well before the petition date.

7           And so that's -- it's the tension between the  
8 criminal law rights of the Government, and this is what makes  
9 this case so interesting, and the bankruptcy law rights of the  
10 unsecured creditors that Your Honor is going to have to wrestle  
11 with and figure out which tension controls in this situation.  
12 And I do not think that's ever been decided before. Your Honor  
13 would be the first to get to decide.

14           THE COURT: Oh, lucky me. I think you pegged it  
15 right if there's tension and I appreciate it. I think it's  
16 well argued. My question is what more is going to be argued on  
17 the 21st to add to this?

18           MS. DWOSKIN: Well --

19           THE COURT: And you might want to supplement.  
20 Obviously, the stay only addressed the merits, but it's only  
21 one factor. My inclination is to carry this to the 21st and to  
22 have the rest of the argument. I would make a decision on the  
23 stay on the 21st. I'm not sure how I'll rule on the motion to  
24 dismiss. Is there any concern with the Court approaching it in  
25 that fashion?

1 MR. SHAPIRO: I have no concern, Your Honor, as long  
2 as there's not going to be some form of discovery, depositions,  
3 various other issues going on between now and then.

4 THE COURT: There's no money.

5 MR. SHAPIRO: I would ask if --

6 THE COURT: There's no money for that.

7 MR. SHAPIRO: Right. I would ask Your Honor --

8 THE COURT: Ms. Dwoskin?

9 MR. SHAPIRO: -- if Your Honor is willing for us to  
10 somehow together let the district court know what stage we are  
11 at in the adversary proceeding and respectfully ask the  
12 district court whether or not it expects that a decision will  
13 be coming out before September the 21st.

14 THE COURT: Ms. Dwoskin, what's your feeling on that  
15 request?

16 MS. DWOSKIN: Thank you.

17 So with respect, so I don't have any issues with that  
18 request, Your Honor. We're trying to prevent a stay from being  
19 granted. So if a stay isn't granted before the adversary  
20 proceeding, that's fine with us.

21 As far as what else is going to be argued, Your  
22 Honor, we really haven't addressed the police power issue. We  
23 haven't. We don't agree. The United States is exercising its  
24 police power by seizing the assets that belong to other  
25 creditors. We think the United States is certainly exercising

1 their police power to seize the defendants' claim but not to  
2 get paid on that claim.

3 So that issue I think is up for argument at the  
4 motion to dismiss hearing that hasn't been heard yet. There  
5 may be one or two others.

6 And, again, Your Honor, just with respect to Mr.  
7 Shapiro's last point about the relation-back doctrine being a  
8 time machine, that's true as against other creditors of the  
9 criminal defendants, right. But, again, BlockFi  
10 (indiscernible) keep those assets. If they do and the United  
11 States is going to trace them, that's fine. But we can't go  
12 get them back from Alameda, right. This is my sister's blue  
13 Jeep that they're trying to take.

14 And they may have a time machine with respect to the  
15 criminal defendants, but not with respect to BlockFi. And so  
16 that's the only point that I wanted to clarify, Your Honor.  
17 But, no, we don't have an issue with this Court staying or  
18 continuing the motion to stay to the motion to dismiss.

19 THE COURT: All right, then. I have no issue with  
20 you both jointly reaching out to Judge Kirsch and at least just  
21 advising as to the status. No argument, please, in the  
22 correspondence.

23 MR. SHAPIRO: Sure. Sure.

24 THE COURT: Just simply the process where we're at.  
25 He's always free to reach out for me if he has a question. I

1 appreciate. I think it was very well argued. I do appreciate  
2 both of your passions on this topic. And I'm going to carry  
3 the matter to the 21st, and I'll decide it at that point.

4 MR. SHAPIRO: Okay. Thank you, Your Honor. Did Your  
5 Honor want additional briefing? I thought Ms. Dwoskin had just  
6 asked for that on the police-power issue. And then, of course,  
7 if Your Honor were inclined to do that, we would probably want  
8 to do it on the core versus non-core issue. But if no  
9 additional briefing is necessary, then that's fine.

10 THE COURT: I don't need additional briefing. My law  
11 clerk --

12 MS. DWOSKIN: No --

13 THE COURT: My law clerks don't want additional  
14 briefing.

15 MR. SHAPIRO: Okay.

16 THE COURT: And obviously, if there are issues to the  
17 motion to dismiss that you want to brief, you're free to do  
18 that. That's -- we still have several weeks.

19 MR. SHAPIRO: Okay, thank you, Your Honor.

20 MS. DWOSKIN: My suggestion was only that the --

21 MR. SHAPIRO: Thank you so much.

22 MS. DWOSKIN: My suggestion was just in response to  
23 Your Honor's question about what else is going to be heard  
24 then.

25 THE COURT: Right.

1 MS. DWOSKIN: We don't think the police-power issue  
2 was at play at all in the motion for a stay, so -- but we don't  
3 think any additional briefing on either motion is required.

4 THE COURT: Great.

5 MR. SHAPIRO: That's fine, Your Honor. Thank you so  
6 much.

7 THE COURT: All right. Thank you. Thank you both.  
8 I think we are done for the day. Thank you for your time.

9 MR. SHAPIRO: Thank you.

10 MS. DWOSKIN: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 (Proceedings adjourned at 12:10 p.m.)

13 \* \* \* \* \*

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

J&J COURT TRANSCRIBERS, INC.

DATE: August 31, 2023